twenty minutes to 5 o'clock on the afternoon of the 26th. The tenant's attorney has a partner residing in the city who was in town all day and in the office until 4 o'clock p.m. It appears there was no delay whatever on the part of the demandant's attorney in making up the issue book and sending it to be served with notice of trial as soon as he got the tenant's pleas. It was sworn these papers were delivered about 5 30 p.m. of the 26th to a servant connected with the household at the house of the tenant's attorney with a request that she would deliver them to Mr. Read the moment he came home, which she promised to do.

I felt at first some doubt whether in each case the issue book should not simply have been returned with a notice to the opposite attorney, that if he proceeded to trial, application would be made to set aside the proceedings. Then if the cases were tried, the matter would have come before the court in term which I should have preferred This course was not suggested, nor the present application opposed on the on the ground that it was irregular or improper.

On consideration I can draw no substantial distinction between the cases, and they appear to show as to the matter of fact that in each case the notice of trial was completely served on Tuesday the 27th, for the following Tuesday, and was not served before. This is irregular, for the time is too short by one day.

The order must therefore be made to set aside the service of the notice of trial for irregularity. *Hogg* v. *Turner*, to be with costs to be costs in the cause to the defendant; and *Wright* v. *Perkie* with costs.

I have examined all the cases noted below before coming to a decision.

Order accordingly.

Kealy v. *Cartwright*, 11 Jur. 378; *Brown* v. *Wildbore*, 1 M. & Gr. 276; *Robinson* v. *Gompertz*, 4 A. & E. 82; *Lancaster* v. *Castle*, 8 Jur. 848; *Kent* v. *Jones*, 3 Dowl. 210; *Tuck* v. *Corfe*, 7 Jur. 998; *Taylor* v. *Whitworth*, 9 M. & W. 478; *Consumers Gas Co.* v. *Kissock*, 5 U. C. Q. B. 542; *Burdett* v. *Lewis*, 7 C. B. N. S. 791; *Patterson* v. *Morrison*, 17 U. C. Q. B. 130; *Arrowsmith* v. *Ingle*. 3 Taunt. 234; *Fitch* v. *Kettle*, 3 M. & Gr. 856.

Monck v. Northwood.

Declaration—Irregularity in statutory form—Security for costs—Official assignee in insolvency.

Sec. 85 of Cap. 22, Con. Stat. U. C. is obligatory, and a declaration was held irregular and set aside because it did not commence by shewing whether the plaintiff sued in person or by attorney.

An official assignee in insolvency cannot be compelled to give security for costs.

[Chambers, 9th April, 1866.]

The plaintiff filed a declaration which commenced as follows:—"Richard Monck, official assignee, under the Insolvent Act of 1864, for the County of Kent, and official assignee of Cornelius McDonald, an insolvent, sues John Northwood who has been summoned, &c."

Robert A Harrison obtained a summons calling on plaintiff to shew cause among other things, why the declaration filed, and the service thereof, and all subsequent proceedings, should not be taken off the files, set aside, and vacated with costs for irregularity, in that the said declaration does not commence by shewing, according to the statute in that behalf, whether the plaintiff sues by attorney or in person, or why all proceedings should not be stayed until the plaintiff, an official assignee, should give security for costs. He cited Con. Stat. U. C. Cap. 22, Sec. 85, and Con. Stat. Cap. 2, Sec. 18, Sub-sec. 2.

John B. Read shewed cause, and cited Har. C. L. P. A., P. 215 and notes.

Draper, C. J.,—I have very reluctantly come to the conclusion that the declaration must be set aside for irregularity.

The 85th Sec. of Con. Stat. U. C. Cap. 22, enacts that "every declaration *shall* commence as follows, or to the like effect, (*venue*) A. B. by E. F., his attorney, (or in person as the case may be), sues C. D.," &c. The Interpretation Act provides that the word "shall" "is to be construed as imperative;" and I cannot say there is anything in the context or other provisions of the act to justify a different construction.

The exception is one of the merest form, but only great inattention could have given rise to it; and the only consequence would be to compel an amendment on payment of costs. Here it may delay the plaintiff for several months, and I have therefore felt the more unwilling to give way to the exception, but if I do not hold the statutory form binding in this case, I never can do so.

There is no ground established for security for costs in this case, and as far as my present impression goes I do not think the stay of proceedings until certain proceedings in insolvency are taken is warranted.

Considering the literal formality of the objection, I shall make an order to set aside the declaration, service, &c., with costs, which I fix at five shillings.*

Ryley et al. v. Parmenter.

Summons followed by an order—Stay of proceedings—Time for pleading—Practice.

Held that where a summons for security for costs with a stay of proceedings was obtained, followed by an order also containing a stay of proceedings, the defendant has the same number of days, after security given, in which to plead as he had at the time the proceedings were stayed by the summons.

[Chambers, May 7, 1866.]

This was an application to set aside an interlocutory judgment, signed by plaintiff as on default of plea.

The declaration was served on 24th April, 1866. A summons for security for costs, with a stay of proceedings, was signed on 28th April. An order, with stay of proceedings, was made thereupon on the 30th April, and served at 10.30 a m. On the same day an application was made for the allowance of the bond given as security,

* The Court of Queen's Bench during last Term, in a case of *Miller* v. *The Agricultural Assurance Co.*, refused to rescind an order similar to the above, as to the point of security for costs, in an action by an official assignee.—Eds. L. J.